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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,070	04/04/2001	Jeffrey D. Messerly	END-0736	4524

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EXAMINER

BUI, VY Q

ART UNIT PAPER NUMBER

3731

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/826,070	Applicant(s) MESSERLY, JEFFREY D.	
	Examiner Vy Q. Bui	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/22/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claim 21-24, 27-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Huitema-US 6117152.

Regarding claims 21, 23-24 and 29-32, Huitema (Fig. 2-5, for example) discloses an ultrasonic instrument 25 including waveguide 50, blade 55, curved treatment portion having functional asymmetry 59, handle 30, clamp member 40 and element 52 rotatable by a user (via connective stud element 35) about the longitudinal axis of the instrument to cause rotation of the wave guide 50 and blade 55 about the longitudinal axis of the instrument as recited in the claims.

Regarding claim 22, the functional asymmetry extends from distal tip 54 of the blade to a point inside the treatment portion.

Regarding claims 27 and 28, the functional asymmetry 59 is substantially a spherical cut.

2. Claims 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Beaupre-US 6283981.

Regarding claims 21 and 24, Beaupre (figures 1-2) discloses waveguide 14 comprising blade 26&28 with a distal and proximal end, treatment portion 26&28 comprising a functional aymmetry 32&37, handle 25 and element/waveguide 14 rotatable by a user about the

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longitudinal axis of the instrument to cause rotation of the wave guide 14 and blade 55 about the longitudinal axis of the instrument. Functional asymmetry 32&37 is to counter torque create by the curve near 37 (col. 2, 35-60).

Regarding claims 22 and 23, the balance portion extends from the distal end of the blade to a point inside the treatment portion and proximal to the treatment portion.

Regarding claim 25, Beaupre (col. 2, line 55-59) discloses transverse vibrations are substantially reduced to zero.

Response to Amendment

The amendment of the claims under 37 CFR 1.132 filed 4/14/2005 is insufficient to overcome the rejection of claims based upon the references Huitema-US 6117152 and Beaupre-US 6436115 as indicated above because the claims do not clearly structurally specify the curved treatment portion. Both references Huitema-US 6117152 and Beaupre-US 6283981 show curved treatment portion.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



11/12/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731